adultery. The decree nisi was made absolute on February 15, 1937. The husband thereupon applied to discharge or vary the maintenance order, basing his application on the facts of the dissolution of the marriage and of the inadequacy of his wages, viz. £2 5s. 3d. per week, to support his present wife and their two children. The justices refused the application, stating that they saw no reason to alter the present order. Thereafter the husband's parents ceased to pay the allowance of 15s. per week.

The husband appealed, on the grounds (i) that the circumstances in which the parents gave a voluntary undertaking to the court to pay 15s. per week had undergone a complete change by reason of the alteration in the status of the parties, and (ii) that the order for 15s. per week was excessive, having regard to the husband's means and responsibilities." (page 737).

The appeal was dismissed by the Divisional Court, and in the course of his judgment, Sir Boyd Merriman had this to say: "At present the only two circumstances which have been put forward to justify a reduction of the sum are that the marriage has been dissolved since October 1935 and that the parents are refusing to pay. It is quite plain, under the decision of this court in *Bragg* v. *Bragg* [1925] page 20 which has been consistently followed, that a *mere* dissolution of marriage does not *of itself* operate to dissolve a maintenance order" (emphasis are mine) (page 738 CD). From the learned Magistrate's notes it would appear that the *Plunkett case* and that of *Wood* v. *Wood*[2] were not brought to his attention. The Court of Appeal case of *Wood* v. *Wood* approved *Bragg* v. *Bragg*[3] (see page 29 B and C) and decide that on the true construction of section 7 of Summary Jurisdiction (Married Women) Act, 1895 dissolution of marriage, whether by decree of an English or a foreign court and whether at the suit of the husband or the wife, did not of itself put an end to a maintenance order, and the discretion under section 7 of the Act to vary a maintenance order therefore survived a dissolution of the marriage (see particularly page 23 G and H and page 29 C).

Section 7 of the English Act reads: —

"A court of summary jurisdiction acting within the city, borough, petty sessional or other division or district, in which any order under this Act or the Acts mentioned in the schedule hereto, or either of them, has been made, may, on the application of the married woman or of her husband, and upon cause being shown upon fresh evidence to the satisfaction of the court at any time, alter, vary, or discharge any such order, and may upon any such application from time to time increase or diminish the amount of any weekly payment ordered to be made, so that the same do not in any case exceed the weekly sum of two pounds. If any married woman upon whose application an order shall have been made under this Act, or the Acts mentioned in the schedule hereto, or either of them, shall voluntarily resume cohabitation with her husband, or shall commit an act of adultery, such order shall upon proof thereof be discharged."

The appeal is allowed with costs here and below.

Appeal allowed.

Solicitors: *C.S. Tan & Co.; Almenoar & Co.*

MALAYSIAN REPORTS

LAU HEE TEAH v. HARGILL ENGINEERING SDN. BHD. & ANOR.

[F.C. (Raja Azlan Shah C.J., Salleh Abas F.J. and Abdoolcader J.) July 10 and August 9, 1979]
[Ipoh — Federal Court Civil Appeal No. 149 of 1978]

Hire-purchase — Loader — Faults in machine necessitating repairs and replacement of parts — Breach of warranty — Hire-purchase agreement rescinded — Counterclaim for hire and for labour and spare parts — Hire-purchase Act, 1967, ss. 6(3), 7, 8(1), 15(5), 17 & 18(2).

Contract — Fraudulent Misrepresentation — Non-disclosure — Whether intended to deceive — Burden of proof where fraud alleged — Contract Act, 1950, s. 17.

Practice and Procedure — Appeal — Findings of fact by trial judge — Whether appellate court can interfere — Appeal record badly prepared.

Evidence — Burden of proof where fraud alleged in civil case.

In this case the appellant had entered into an agreement on August 14, 1968 to take a loader on hire-purchase as hirer with the first respondent as dealer and the second respondent as owner. He was given a written guarantee by the first respondent for a period of six months against faulty parts and for the supply of spare parts. The machine developed faults when put to use and this necessitated repairs and replacement of some parts. The appellant alleged that certain fraudulent misrepresentations were made to him which led to his entering into the hire-purchase agreement and he purported to rescind the contract of sale. The machine was re-possessed by the first respondent on behalf of the second respondent on October 6, 1969 as six instalments under the hire-purchase agreement were due. The appellant instituted proceedings for declarations that the contract of sale had been rescinded, for the refund of money paid by him and for damages for breach of warranty by the respondents. The respondents traversed these allegations and the first respondent counterclaimed for the payment of moneys due to it under the Hire-Purchase Act and for work done and spare parts supplied to the appellant. The learned trial judge gave judgment for the appellant against the first respondent for breach of warranty and undertaking in the sum of $2,250, dismissed the appellant's claim against the second respondent and on the first respondent's counterclaim awarded the sum of $17,772.24 under section 15(5) of the Hire-Purchase Act, 1967 and a further sum of $202.10 for the cost of articles supplied but not under the warranty relating to faulty parts. The appellant and the first respondent appealed and cross-appealed against the decision of the learned trial judge.

Held, dismissing the appeal and counter-appeal: (1) there was no active duty on the first respondent's part to inform the appellant of the year of manufacture of the machine and the fact that it had been involved in a minor accident in a previous demonstration. These two matters were not material in the sense that non-disclosure was intended to deceive the appellant or to induce him to enter into the hire-purchase transaction;

(2) the breach of warranty against faulty parts contained in the written guarantee of the first respondent did not give rise to a right to rescind the hire-purchase agreement but to a claim for damages. The right of action for damages would lie only against the first respondent;

(3) on the facts the learned judge was correct in finding that that it was never represented to the appellant that the machine was in fact manufactured in 1968;

(4) the learned judge was also right in concluding that the machine in question was new and not secondhand merely because it had been used once previously for demonstration and had been involved in a minor accident and that there was therefore no misrepresentation by the first respondent on this point;

(5) there was a breach by the first respondent of the warranty contained in the written guarantee but this did not entitle the appellant to rescind the agreement but only to damages therefor;

(6) the learned trial judge was correct in awarding $17,772.24 under the Hire-Purchase Act and $202.10 for spare parts not covered by the guarantee.

Cases referred to:-

(1) *Seng Hin* v. *Arathoon Sons Ltd.* [1968] 2 M.L.J. 123.

(2) *Baron Akerhielm* v. *Rolf De Mare* [1959] A.C. 789, 805.

(3) *Bater* v. *Bater* [1951] P. 35, 37.

(4) *Hornal* v. *Neuberger Products Ltd.* [1957] 1 Q.B. 247, 263-264, 266.

(5) *Chow Yee Wah & Anor.* v. *Choo Ah Pat* [1978] 2 M.L.J. 41.

(6) *Reg.* v. *Ford Motor Co. Ltd.* [1974] 1 W.L.R. 1220, 1227-1228.

(7) *John McGrath Motors (Canberra) Pty. Limited* v. *Applebee* (1963-4) 110 C.L.R. 656.

HIGH COURT.

A. Jayadeva for the plaintiff.

W.S.W. Davidson for the first defendant.

Kwok Yoke How for the second defendant.

Cur. Adv. Vult.

Wan Hamzah J.: In his statement of claim the plaintiff alleges that the first and the second defendant companies made certain fraudulent representations to him which led him to enter into a hire-purchase agreement with the second defendant company to purchase one Euclid L-20 Loader (which I shall refer to as the loader). He therefore claims for declaration that he is entitled to rescind the agreement, and also claims for damages against both of the defendant companies. Both of the defendant companies deny these allegations. The first defendant company also denies the plaintiff's allegation that it had sold the loader to him. From the evidence I find that the true relationships among the plaintiff, the first defendant company and the second defendant company are as follows. The employees of the first defendant company offered to sell to the plaintiff the loader which was in its possession, and carried out negotiations with him which led to the making of the hire-purchase agreement (at pages 6 to 9 of Exhibit A) and arranged for the transaction leading to that agreement, wherein he agreed to take the loader and the second defendant company agreed to let it to him on hire-purchase. Therefore the plaintiff became the "hirer" as defined in the Hire-Purchase Act, 1967, the first defendant company became the "dealer" and the second defendant company became the "owner". As regards the responsibility and liability of the first and the second defendant companies relating to representation, warranty or statement I would like to refer to section 7(1) of the Act which reads —

"Every representation, warranty or statement made to the hirer or prospective hirer, whether orally or in writing, by the owner or the dealer or any person acting on behalf of the owner or the dealer in connection with or in the course of negotiations leading to the entering into of a hire purchase agreement shall confer on the hirer —

(a) as against the owner — the same right to rescind the agreement as the hirer would have had if the representation, warranty or statement had been by an agent of the owner; and

(b) as against the person who made the representation, warranty or statement, and any person on whose behalf the person who made the representation, warranty or statement was acting in making it — the same right of action in damages as the hirer would have had against them or either of them if the hirer had purchased the goods from the person who made the representation, warranty or statement of the person on whose behalf the person who made the representation, warranty or statement was acting (as the case may be) as a result of the negotiations."

Therefore if any fraudulent representation was made to the plaintiff by any employee of the first defendant company and he was induced to enter into that agreement by the fraudulent representation, he would have as against the second defendant company the right to rescind it under section 7(1)(a), and as against the first defendant company the right of action in damages under section 7(1)(b).

In the statement of claim the plaintiff alleged that the first defendant company's sales representative represented to him that the loader was a 1968 model (*vide* paragraph 4) whereas it was manufactured in 1964 (*vide* paragraph 14). The plaintiff states in evidence —

"... On August 2, 1968 I went to the Ipoh office of Syarikat Harper Gilfillan. There I saw the manager Mr. Ling. I also saw Mr. Chong (salesman of the first defendant company) there... I was shown Euclid machine by Mr. Ling and Mr. Chong.... Both Mr. Ling and Mr. Chong said that the Euclid machine was a new one.... They stated that the year of manufacture was 1968...."

When cross-examined the plaintiff stated: "They (i.e. Mr. Ling and Mr. Chong) said this was 1968 — the newest model. They did not say that it was assembled in 1968". Therefore it appears that the plaintiff was not definitely certain of what Mr. Ling and Mr. Chong said to him, i.e. whether they said the loader was of 1968 model or it was manufactured in 1968. In my opinion the distinction between model year and year of manufacture is important, because if Mr. Ling and Mr. Chong had mentioned model year 1968 and had not mentioned the year of manufacture there would not be misrepresentation. According to the evidence of Mr. Ling, at the time of the sale the loader was of the current model which had not changed since 1964, and therefore it would not be false to say that it was of 1968 model. The plaintiff testified that when he received the hire-purchase agreement his daughter explained it to him and read out the year of manufacture 1966. When he discovered this he saw Mr. Chong and asked for explanation. Mr. Chong gave him certain explanation, and the plaintiff stated further: "He also assured me that it was a new machine of 1968 model". Here again Mr. Chong did not say that it was manufactured in 1968.

Another ground on which the plaintiff claims rescission is that the employees of the first and of the second defendants either orally or in writing and in particular in the hire-purchase agreement itself represented to him that the loader was new whereas, he alleges, it was second-hand. I accept the evidence and submission on behalf of the defendants that their employees by stating that it was new meant that it had not been sold previously and it was not second-hand. "Second-hand" means "has been used when offered for sale". I hold that if the loader had been regularly used as a demonstration machine, it would have been second-hand. There is no evidence that the loader had been regularly used for demonstration purposes although it is not disputed by the defendants that it had been used once for demonstration. I do

not think that it can be described as second-hand merely because it had been used once for demonstration.

Another ground for the plaintiff's claim for rescission is that the employees of the first defendant, it is alleged, represented to him that the first defendant carried sufficient stock of spare parts for the loader whereas it did not. The plaintiff testified that on August 14, 1968 at the first defendant's office in Ipoh Mr. Chong handed to him a letter of guarantee signed by Mr. Ling (page 10 of Exhibit A) and explained its contents to him. The plaintiff said that Mr. Chong explained to him that spare parts would be made available within one week at the latest and that 100% guarantee was given for the supply of spare parts. Mr. Chong denied that he had said so to the plaintiff, although he admitted that the letter of guarantee was explained to the plaintiff. He stated what was explained to the plaintiff, being the same as the content of the letter of guarantee. The evidence of Mr. Chong on this matter is corroborated by the evidence of Mr. Ling. I accept the evidence of Mr. Chong and of Mr. Ling, and I find that the plaintiff must have misunderstood the content of the letter of guarantee when it was read and explained to him.

In the statement of claim the plaintiff also alleges breach by the defendant companies of the condition of merchantable quality. Section 6(2)(a) of the Act reads —

"In every hire-purchase agreement there shall be an implied condition that the goods shall be of merchantable quality, but such a condition shall not be implied —

(a) where the hirer has examined the goods or a sample thereof, as regards defects which the examination ought to have revealed."

Although according to the evidence, during the negotiation for the sale the loader was shown to the plaintiff and its engine started, I do not think that this examination by the plaintiff was a sufficient examination which ought to have revealed defects. As I understand the plaintiff's pleading, he elects to treat the alleged breach of the condition of merchantable quality as a breach of warranty and claims damages for the breach. In order to show that the loader was not of a merchantable quality the plaintiff must show that it was of no use for any purpose for which it would normally be used and was therefore not saleable under that description (*vide Seng Hin* v. *Arathoon Sons Ltd.*[1]).

The plaintiff further alleges in the statement of claim that there was breach of the condition that the loader was reasonably fit for the purpose for which it was required by him. Section 6(3) of the Act reads —

"Where the hirer expressly or by implication makes known to the owner or the dealer or to any servant or agent of the owner or the dealer the particular purpose for which the goods are required, there shall be implied in the hire-purchase agreement a condition that the goods shall be reasonably fit for that purpose...."

In Clause 6 of the hire-purchase agreement it is stated: "The hirer has not made known to the owner or any agent or servant of the owner or any dealer or any agent or servant of any dealer any particular purpose for which the goods are required". But the plaintiff testified that he made known to the first defendant's employees that he required the loader for the purpose of working his mine, and Mr. Ling Liong Ching (DW4 and a director of the first defendant company) admitted on cross-examination that the plaintiff told him that he wanted to buy the machine for the purpose of his tin mine. Besides, Mr. Chong Kean Choy (DW1 and salesman of the first defendant company) testified that when he came to know that the plaintiff was interested in buying a machine he arranged with him to meet at Butterworth to show him catalogues and give him particulars about a number of machines, and Mr. Chong Kean Choy went on to testify further: "On that day I also went to the mine site at Kulim.... While I was there I saw the type of mine work plaintiff was carrying out". I am therefore satisfied that the plaintiff had made known to the first defendant company the purpose for which he required the loader, i.e. the purpose of working his tin mine, and there was therefore an implied condition that the loader must be reasonably fit for that purpose. As I understand the plaintiff's pleading, he elects to treat the alleged breach of the condition of fitness as a breach of warranty and claims damages for the breach.

As to the alleged breach of the conditions of merchantable quality and fitness of the loader, the following are the particulars of breach so far as can be gathered from the statement of claim: —

"After the said Loader had been delivered to the plaintiff's mine it had to be repeatedly repaired (vide paragraph 13) ...The said Loader had not been in good working order at the time of sale as it had been used for demonstration purposes and had not been properly maintained by the first defendant company. It had previously been involved in a collision. It had also been stored away in a ware-house for over a period of four years after each demonstration with the result that the engine and other parts of the Loader had become defective (vide paragraph 14)...The said Loader was a secondhand 1964 model with its engines, mechanism and parts in defective condition. The first defendant company also did not carry any or any sufficient spare parts for the said Loader (vide paragraph 16)."

The plaintiff mentioned in his evidence the various defects in the loader which were encountered after it had been delivered to him and which, it is averred, constitute the breach of the warranty of merchantable quality and the fitness warranty. For evidence of defects the plaintiff also relied on his two letters dated January 6, 1969 and February 7, 1969 respectively, written to the manager of the first defendant company (*vide* pages 24 and 27 of Exhibit A). The defects which he mentioned when giving evidence were the same as those stated in the letters. In order to ascertain the nature of the defects I think it is best to refer to the two letters and the replies given by the manager. The plaintiff in his letter dated January 6, 1969 drew the attention of the manager to the defects in certain parts of the loader. The manager sent a reply dated January 14, 1969 (*vide* page 25 of Exhibit A) in which he dealt with every one of the defective parts and stated that the defective parts had either been replaced or repaired. Then the plaintiff sent the letter dated February 7, 1969 in which he set out his complaints against certain parts which were either leaking, rusty, worn out, not working or had snapped, and against delay in replacing the defective parts or attending to the defects and against inefficient repairs. The first

defendant company sent a reply dated February 19, 1969 (*vide* page 28 of Exhibit A), but this reply did not contain any denial of the matters complained of by the plaintiff in his letter dated February 7, 1969. I accept that the defects stated in the plaintiff's letter dated February 7, 1969 were true. I also accept as true the plaintiff's allegation in that letter regarding the delay in replacing the defective parts or attending to them and the inefficient repairs. From the evidence in this case I find that all of the defects were defects which could be put right either by replacement of the defective parts or by simple repairs, and they were not defects sufficiently serious to render the loader useless for any purpose for which it would usually be used, and therefore it cannot be said that the loader was of unmerchantable quality or unfit for the plaintiff's purpose. Nor can the delay on the part of the first defendant company in making replacement or attending to the defects and the inefficient repairs be taken as breach of the conditions of merchantable quality and fitness. All of these matters are proper matters to be dealt with under the warranty against faulty parts contained in the first defendant company's letter dated August 14, 1968 (*vide* page 10 of Exhibit A). In this letter the first defendant company gave six months warranty against faulty parts other than those caused by negligence or wear and tear and undertook to replace faulty parts by supplying spare parts ex stock within seven days and supplying by airfreight spares that were urgently required. This six months warranty expired on February 14, 1969. The plaintiff's second letter of complaint was written just before the expiry of the warranty period. I find that there was breach by the first defendant company of this warranty and undertaking in that some faulty parts other than those caused by wear and tear) were not replaced or not efficiently repaired and there was undue delay in replacing or attending to other faulty parts. In my opinion breach of the warranty and undertaking relating to faulty parts does not give rise to a right to rescind the hire-purchase agreement but to a right to damages.

I find that the plaintiff had suffered loss as the result of the first defendant company's failure to replace certain faulty parts, its delay in replacing other faulty parts and as the result of repairs not properly carried out by it. In particular, due to oil leakage not being attended to by the first defendant company in proper time, excessive quantity of oil was consumed. I accept the plaintiff's evidence that he suffered loss of between $400 and $500 per month due to oil leakage. According to his evidence the loader started giving trouble after August 1968. From that time till the expiry of the warranty period on February 14, 1969 it was about five months. Taking the loss in respect of oil at $450 per month, it amounted to $2,250 for the five months during which excessive quantity of oil was used during the warranty period.

The plaintiff testified that because the machine was out of repair, the work in his mine came to a standstill and the workers remained idle, and that the loss due to stoppage of work amounted to between $400 and $500 per day, but he did not give the number of days on which the mine was at a standstill. Therefore it is not possible to assess the loss resulting from stoppage of work during the warranty period.

I shall now deal with the counterclaim of the first defendant company who contends that since the plaintiff voluntarily and without sufficient cause terminated the hiring, under sections 14(5) and 17(2) he is liable to pay the difference between the value of the loader at the date of the termination of the hiring plus the total amount already paid by him and the net amount payable under the agreement. Alternatively, it is contended that the plaintiff having elected to affirm the contract is liable for all overdue instalments up to the date of repossession subject to the limit provided by sections 14(5) and 17(2).

Under section 14 a hirer may terminate the hiring by returning the goods to the owner, and section 14(5) in so far as it is relevant to the present case provides that when a hire-purchase agreement is determined by the hirer pursuant to section 14, the owner is entitled to recover from the hirer the amount that the owner would have been entitled to recover if he had taken possession of the goods at the date of termination of the hiring. Under section 17(2), where the owner takes possession of any goods comprised in a hire-purchase agreement the owner can recover a sum equal to the net amount payable in respect of the goods less the total amount of the following: —

(i) the value of the goods at the time of the owner so taking possession thereof; and

(ii) the amount paid or provided by or on behalf of the hirer under the agreement.

Under section 17(3)(a), the net amount payable is the total amount payable less the statutory rebates for terms charges and insurance as at the time of the owner taking possession of the goods. In so far as it is relevant to the present case, section 17(3)(b) provides that the value of any goods at the time of the owner taking possession thereof is the best price that could be reasonably obtained by the owner at that time, less —

(1) the reasonable costs incurred by the owner of and incidental to his taking possession of the goods;

(2) any amount properly expended by the owner on the storage, repair, or maintenance of the goods; and

(3) the reasonable expenses of selling or otherwise disposing of the goods.

In so far as it is relevant to the present case, section 2(1) provides that where it is agreed in a hire-purchase agreement that the terms charges have been calculated on a simple interest basis at a rate specified in the agreement on the amount outstanding from month to month, "statutory rebate" in relation to terms charges means the amount of interest attributable to the period of complete months still to go under the agreement. According to the hire-purchase documents at pages 1 and 6 of Exhibit A, the terms charges in the present case have been calculated on simple interest at 10% per annum on $52,000 for 24 months amounting to $10,400. The date of payment of the first instalment provided in the hire-purchase agreement was September 25, 1968. The date of the termination of hiring

by the plaintiff (or of repossession of the loader by the first defendant company) was October 6, 1969. Thus the period of complete months still to go was eleven months, and the amount of interest attributable to the period of complete months still to go is 11/24 of $10,400 = $4,566.66, and this is the amount of the statutory rebate. Therefore the net amount payable is $75,400 — $4,766.66 = $70,633.34. The value of the loader at the time of the termination of hiring is $30,000 (the price for which it was resold) less $3,138.90 (reconditioning and repossession charges) = $26,861.10. Therefore the owner is entitled to recover from the plaintiff $70,633.34 (the net amount payable) less the total of $26,861.10 (the value of the loader at the time of the termination of hiring) and $26,000 (the amount paid by the plaintiff) = $17,772.24. The second defendant company as owner has assigned its right under the hire-purchase agreement to the first defendant company.

The first defendant company includes in its counterclaim a claim for $1,700.31 for work done and spare parts supplied to the plaintiff at his request, the details of which are given in the statement at page 58 of Exhibit A. Delivery orders and invoices in respect of these were produced *vide* pages 86 to 110 of Exhibit A. It was alleged that the supply of those spare parts was not covered by the warranty and no claim for warranty had been made in respect of them. The warranty at page 10 of Exhibit A against faulty parts other than those caused by negligence or wear and tear, was given for a period of six months (until February 14, 1969). All of the delivery orders and invoices (except delivery order No. 3533 at page 94 and the corresponding invoice at page 110) show that the spare parts were supplied during the warranty period. The first defendant company has not given sufficient proof to show that they were supplied to replace parts which had become useless due to negligence or wear and tear. There is reason to believe that the parts which were replaced were faulty not because of negligence or wear and tear but because of long storage. The invoices show that most of the items supplied were elements, hoses and rings (seals). According to him Fook Wa's report Exhibit P6, hydraulic elements, hoses and seals which he found in the loader had become defective due to long period of storage. I do not think that the first defendant company's claim in respect of these items can be allowed, because they are, in my opinion, items which the first defendant company had to supply free of charge under the six months warranty. I would allow the claim only in respect of the invoice No. 09725 at page 110 of Exhibit A for $202.10 for articles supplied after the warranty period.

On the plaintiff's claim I give judgment for the plaintiff against the first defendant company in the sum of $2,250 being damages for breach of warranty and undertaking relating to faulty parts with interest thereon at 6% from date of judgment and costs. The plaintiff's claim against the second defendant company is dismissed with costs.

On the first defendant company's counterclaim I give judgment for the first defendant company in the sum of $17,772.24 under section 14(5) and in the sum of $202.10 for cost of articles supplied not under the warranty relating to faulty parts, with interest on the two sums at 6% from date of judgment, and costs.

From the above decision the plaintiff appealed to the Federal Court.

FEDERAL COURT.

A. Jeyadeva for the appellant.

U. Harcharan Singh for the respondents.

Cur. Adv. Vult.

Abdoolcader J. (delivering the judgment of the Court): The appellant who runs a fleet of taxis in Penang and is a tinner by trade as well negotiated the purchase of a Euclid L-20 Loader from the 1st respondent for his tin mine in Kulim and as a result entered into an agreement dated August 14, 1968 to take the loader on hire-purchase under the Hire-Purchase Act, 1967 (since revised under the Revision of Laws Act, 1968) as hirer, with the 1st respondent as dealer and the 2nd respondent as owner. At his behest he was given a written guarantee by the 1st respondent for a period of six months against faulty parts and for the supply of spare parts.

The machine when put in use developed faults which necessitated repairs and replacement of some parts. The appellant alleges that certain fraudulent representations were made to him which led to his entering into the hire-purchase agreement and claims in his statement of claim that he had rescinded the contract of sale, whatever that is supposed to refer to. The machine was repossessed by the 1st respondent on behalf of the 2nd respondent on October 6, 1969 as nine instalments payable under the hire-purchase agreement were due. The appellant then instituted proceedings to claim declarations that the contract of sale made on August 2, 1968 by him with the 1st respondent, whatever that means, and the hire-purchase agreement between the 2nd respondent and himself be deemed to have been rescinded, the refund of certain sums of money paid by him, damages for fraud and fraudulent misrepresentation and damages for breach of warranty by the respondents. The respondents traversed these allegations and the 1st respondent counterclaimed for the payment of moneys due to it under the provisions of sections 15(5) and 18(2) of the Hire-Purchase Act and a further sum of $1,770.31 for work done and spare parts supplied to the appellant.

The learned judge gave judgment for the appellant against the 1st respondent for damages for breach of warranty and undertaking in the sum of $2,250 with interest and costs, dismissed the appellant's claim against the 2nd respondent with costs and on the 1st respondent's counterclaim awarded it the sum of $17,772.24 under section 15(5) of the Act and a further sum of $202.10 for the cost of articles supplied not under the warranty relating to faulty parts, interest on these two sums and costs. Both the appellant and the 1st respondent now respectively appeal and cross-appeal against the decision of the learned judge. The 1st respondent is not now pursuing its third ground in the cross-appeal with regard to the

scale of the costs awarded to the appellant in respect of his claim.

The appellant bases his claim on fraud alleging fraudulent and false misrepresentations by the respondents. The learned judge did not find that there was in fact any fraudulent misrepresentation or indeed any misrepresentation at all. The Privy Council held in *Baron Akerhielm* v. *Rolf De Mare*[1] that where a defendant has been acquitted of fraud in a court of first instance the decision should not be displaced on appeal except on the clearest grounds. It would appear from the evidence that the year of manufacture of the machine and the fact that it had been involved in a minor accident in one previous demonstration to a prospective purchaser were not disclosed to the appellant but the explanation to section 17 of the Contracts Act, 1950 clearly states that mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech. We accept the submission made for the respondents that there was no active duty on the 1st respondent's part to inform the appellant of these two matters and that they were not material in the sense that non-disclosure was intended to deceive the appellant or induce him to enter into the hire-purchase transaction within the meaning of section 17 of the Contracts Act.

On the question of the burden of proof when fraud is alleged, the standard required in civil cases is proof on the balance of probabilities but the degree of probability which must be established will vary from case to case according to the gravity of the allegation to be proved. A civil court when considering a charge of fraud will naturally require for itself a higher degree of probability than that which it would require when asking if negligence is established. It does not adopt so high a degree as a criminal court but still it does require a degree of probability which is commensurate with the occasion (*Bater* v. *Bater;*[2] *Hornal* v. *Neuberger Products Ltd.*[3]). It does not appear from the evidence that the burden required of the appellant on the question of fraud has been discharged to an extent meriting interference with the learned judge's decision which appears to be based primarily on findings of fact, and the Judicial Committee of the Privy Council has recently reaffirmed in *Chow Yee Wah & Anor.* v. *Choo Ah Pat*[4] that in the face of a finding by the trial judge on a question of fact an appellate court was only entitled to displace his conclusion if it was satisfied that his view was plainly wrong and that any advantage which he enjoyed by having seen and heard the witnesses are not sufficient to explain his conclusion.

With regard to the matter of the implied conditions under section 7(2) and (3) of the Hire-Purchase Act as to merchantable quality and reasonable fitness of the machine for the purpose for which it was required which we shall advert to presently, the learned judge held that on his pleading the appellant has elected to treat the breach of these implied conditions as breaches of warranty claiming relief in damages therefor. He also held that the breach of warranty against faulty parts contained in the written guarantee of August 14, 1968 given by the 1st respondent did not give rise to a right to rescind the hire-purchase agreement but to a claim in damages. These conclusions are borne out by the appellant's statement of claim and the relief he seeks. The appellant under cross-examination admitted that his previous solicitors in their letter of July 17, 1969 to the 1st respondent refused to allow the machine to be repossessed, categorically stating that the 1st respondent had no right or authority to repossess the loader and that any attempt to do so would be reported to the police. He added that this letter was written to that effect because he had then come to know the machine had been involved in an accident and that he had been cheated. He further admitted that right up to the date when the machine was repossessed on October 6, 1969 he maintained that attitude, corroborating the evidence of Ling Liong Ching (DW4), the 1st respondent's manager for North Malaya, to the same effect. Mr. Jayadeva for the appellant in his submission relies heavily on a letter his firm wrote to the 1st respondent on September 1, 1969 on the question of rescission but in answer to a specific question we put to him agrees that all that the appellant was asking for in that letter was damages and not rescission.

It is now necessary to consider the application of the provisions of section 8(1) of the Hire-Purchase Act to the facts of this matter to determine the liability of the two respondents in the matter of damages. Section 8(1) reads:

"Every representation, warranty or statement made to the hirer or prospective hirer, whether orally or in writing, by the owner or the dealer or any person acting on behalf of the owner or the dealer in connection with or in the course of negotiations leading to the entering into of a hire-purchase agreement shall confer on the hirer —

(a) as against the owner — the same right to rescind the agreement as the hirer would have had if the representation, warranty or statement had been by an agent of the owner; and

(b) as against the person who made the representation, warranty or statement, and any person on whose behalf the person who made the representation, warranty or statement was acting in making it — the same right of action in damages as the hirer would have had against them or either of them if the hirer had purchased the goods from the person who made the representation, warranty or statement or the person on whose behalf the person who made the representation, warranty or statement was acting (as the case may be) as a result of the negotiations."

The representations and warranty were alleged to have been made to the appellant by employees of the 1st respondent and the learned judge held that the right of action in damages under section 8(1)(b) would lie only against the 1st respondent. The appellant alleges that the 1st respondent was the agent of the 2nd respondent for the purposes of the hire-purchase arrangement entered into with him, and this the 1st respondent admits in its defence, no doubt in the light of a master agreement between them; the 2nd respondent in its defence denies any such agency but Loong Foo Ching (DW6), a staff officer with the 2nd respondent, in effect admits it in his evidence in cross-examination. The question however that arises in this case for the purposes of section 8(1)(b) is whether the employees of the 1st respondent who allegedly made

the representations and warranty were acting on behalf of the 2nd respondent in making them.

The evidence discloses that the appellant placed considerable reliance on the written guarantee of August 14, 1968 given to him by the 1st respondent expressly at his own behest and which *ex visceribus verborum* was intended to and did indeed subject only the 1st respondent to the warranty and undertaking specified therein. The letter of September 1, 1969 from the appellant's solicitors to the 1st respondent clearly states that the fraudulent misrepresentation therein referred to and allegedly made to the appellant was also fraudulently made by the 1st respondent's representative to the 2nd respondent and the various insurance companies. The appellant's solicitors in a letter on the same day to the 2nd respondent repeated the allegation of fraudulent misrepresentation to the appellant by the representative of the 1st respondent but said nothing to the effect that in doing so that person was also acting on behalf of the 2nd respondent in making it and that this was made by him as agent for the 2nd respondent. The appellant said in evidence that he signed his name on an application form after he had agreed to buy the machine and in cross-examination said that he was told by Chong Kean Choy (DW1), the 1st respondent's salesman, after he had signed the form that the 1st respondent would get the money from the hire-purchase company and he had to put in a 20% deposit. In the light of these several matters which we have adumbrated the representative or representatives of the 1st respondent were not acting on behalf of the 2nd respondent in making the representations and warranty complained of and we are accordingly of the view that the learned judge was correct in his conclusion that right of action in damages under section 8(1)(b) of the Hire-Purchase Act would only lie against the 1st respondent.

We now turn to the allegation that the 1st respondent represented to the appellant that the machine was a 1968 model whereas in fact it was manufactured in 1964. The appellant in his evidence-in-chief said that both DW4 and DW1 told him on August 2, 1968 when he went to their Ipoh office that the year of manufacture of the machine was 1968. Both of them of course denied this. He said later in his evidence that DW1 assured him that it was a new machine of 1968 model when he went to see the latter after his daughter had explained the hire-purchase agreement to him. He agreed under cross-examination that he wanted to get the machine as cheap as he could and that the price quoted was already cheap. He went on to say that the 1st respondent told him that they were selling the machine at cost price without any profit but when pressed he could not give any reason for this act of generosity. Again, under cross-examination, he said that both DW1 and DW4 said: 'this was 1968 — the newest model. They did not say it was assembled in 1968'. The appellant in his memorandum of appeal and submission by counsel contends that the term '1968 model' is a commercial term understood by the ordinary person to mean a model manufactured in 1968 but Mr. Jayadeva had perforce to admit there is no evidence to substantiate this argument.

DW1 said in evidence that the purchase price for the machine agreed with the appellant was $65,000 rounded to that sum after a special discount of 25% from the full price of $87,000 because it had been kept in stock for some time, and that he told the appellant this and that he could therefore get it cheap. He said that the L-20 model came out about five years previously and there was not very much change between 1963 and 1968. He is borne out in this by DW4 who testified that a model remains the same for a number of years and that in this particular case there was no model change between 1964 and 1968 except that a new model was coming in 1968 but had not arrived in this country yet. He went on to say that at the time of the sale to the appellant the machine was of the current model. DW1 said that the year of manufacture given in the hire-purchase forms as 1966 was just guesswork on his part. DW4 corroborated what DW1 said and his evidence was to the effect that he and DW1 had told the appellant that this machine had been in stock for some time and if he was interested in this particular machine they would give him a very good discount. He also said that he had suggested to the appellant that if he wanted to buy a new model of the same type of machine on order he had to pay $96,000 based on prices in the United Kingdom and Europe and would have to wait from four to six months before he could get a new current model.

DW4 also said in evidence that they were selling this machine to the appellant as old stock practically at cost. That the appellant knew this machine had been kept in stock for some years is borne out by his own statement to that effect in his letter of January 6, 1969 to the 1st respondent. DW4 testified that the appellant knew that the machine which he was buying was of old stock and had asked whether it still qualified for a warranty and requested that it be put in writing. This no doubt refers to the written guarantee by the 1st respondent of August 14, 1968 which the appellant insisted he should have in writing and it is only reasonable to infer that this was because he knew before he agreed to take it that the machine had been in stock for some time. There is also uncontroverted evidence that DW4 gave the appellant a loan of $5,000 free of interest for the purposes of the initial deposit he had to make and this further bears out that because the machine had been in stock for some time the 1st respondent was extremely accommodating to the appellant in every way possible in the matter of the agreed purchase price which was indisputably cheap as it went.

R.N.B. Pillay (DW3), an expert witness for the 1st respondent, said in evidence that it is the accepted practice with firms dealing in heavy plant not to volunteer information as to the year of manufacture of a machine. Mohamed Tarmizi (PW4), an expert witness called by the appellant to give evidence in rebuttal, said that it would be fair if a seller discloses that a machine was from old stock and it would be sold at a discount. And again this witness said under cross-examination that assuming there has been no model change and in 1970 one asked for a current model, a 1967 machine of the same model which has not changed would be a current model.

In the circumstances we can see no reason for disagreeing with the learned judge in his conclusion that there was no misrepresentation on this aspect of the model of the machine and that it was never represented to the appellant that the machine was in fact manufactured in 1968, a conclusion wholly based on the evidence before him.

The question next arises as to whether the machine in question was new or secondhand when the appellant took it on hire-purchase. It is described as new in the hire-purchase agreement. The appellant said in evidence that both DW4 and DW1 told him the machine was a new one. It appears from the evidence that this machine had on one occasion in 1966 been demonstrated to a prospective purchaser in the course of which a minor collision occurred with a Michigan loader causing a puncture in one of the Euclid's rear tyres. The tyre was subsequently replaced and there was no other damage to this machine. DW4 emphatically affirmed that this accident had no detrimental effect on the machine. DW1 said that the machine had not been sold or hired out to anyone previously and DW4 testified that to his knowledge except for this one previous demonstration of the machine in question when the minor accident took place, it had never been demonstrated previously. It is our view that as a result of the minor accident we have just referred to the machine did not cease to be new, and we agree with and would adopt the test in this connection propounded by the Court of Appeal in England in *Reg.* v. *Ford Motor Co. Ltd.*[5] (at pages 1227-1228):

"But the heart of this case really turns on the fifth criterion, the suggestion that a car ceases to be new as soon as it sustains any significant damage and irrespective of the quality of the repairs. That is a test which we do not find it possible to accept. It seems to us that in this respect the questions to be asked when a car has sustained damage which has thereafter been repaired, both events having occurred away from the manufacturer's premises, are: First, what is the extent and nature of the damage? And, second, what is the quality of the repairs which have been effected? If the damage which a new car after leaving the factory has sustained is, although perhaps extensive, either superficial in character or limited to certain defined parts of the vehicle which can be simply replaced by new parts, then provided that such damage is in practical terms perfectly repaired so that it can in truth be said after repairs have been effected that the car is as good as new, in our judgment it would not be a false trade description to describe such a car as new."

On an application of this test to the facts of this matter in relation to the nature of the damage and the quality of the repairs which involved only the replacement of a tyre, the machine did not cease to be a new one as a result of the minor accident that occurred previously.

DW1 said that he understood 'new' as meaning it had not been sold before and DW3 said that holding a machine in stock for two or three years does not necessarily mean the machine is old and that machines some four years old were sold as new machines by the Wearne's group of companies in which he previously worked. He also said that a machine that had been demonstrated once would not automatically be a demonstration model in the prevailing market practice in this country and DW4 corroborates his evidence in this respect. Khong Kin Kong (DW5), another witness called to give expert evidence for the 1st respondent, said that when a new machine taken from the new machine stock is demonstrated to an interested party who however decides not to buy it, it is then taken back and cleaned up and put back in the new machine stock and then later sold as a new machine, and he went on to add that it would be classified as secondhand only if it had been sold earlier or had been repossessed. He went on to say that if a demonstration machine is taken out from the new machine stock it remains in the new machine stock and if taken out from the used machine stock for demonstration it remains in the used machine stock, testifying to the practice adopted by Tractors Malaysia Berhad in which he is a service manager and which he said does not have a separate demonstration stock. The evidence discloses that the 1st respondent does not have a demonstration stock either.

On the other hand PW4, the appellant's expert witness, prevaricated when asked whether a machine kept for three years for sale could be said to be new and answered to the effect that he would call it stock machine but went on to add that he would call it a new machine because it was held under stock but he would give the year of the model when selling it. However PW4 agreed in cross-examination that it is the accepted and prevailing practice in this country for cars to be driven on the road from the assembly plant to the various distribution centres and then put into stock and that in spite of the fact that these cars have been driven for some hundreds of miles they are still sold as new cars. It is also significant that counsel for the appellant in examining his own witness Lim Ah Wa (PW2) who happens to be the 1st respondent's fitter suggested to him that the machine in question was a new machine which had been kept for a long period to which he answered in the affirmative. As we have already said the evidence discloses that this machine had been used for demonstration only on one previous occasion and there is no evidence at all that it had been regularly used for demonstration purposes during the period it was in stock.

In *John McGrath Motors (Canberra) Pty. Limited* v. *Applebee*,[6] the defendant, a dealer in new and secondhand cars, sold to the plaintiff a car which had not been earlier sold by retail, but which had been manufactured seventeen months earlier. The salesman described the car as 'new'. The High Court of Australia held that where the parties understood 'new' to mean 'not secondhand' or alternatively 'of recent origin', there was no evidence that the salesman used the words as meaning other than 'not secondhand' and therefore a finding that he was fraudulent could not be supported. This decision is very pertinent in the light of the evidence we have adverted to and in particular that of DW1, and we would also in this respect refer to *Baron Akerhielm* v. *Rolf De Mare*[1] (at page 805) where the Privy Council held to the effect that the question was not whether the defendant in any given case honestly believed the representation to be true in the sense assigned to it by the court on an objective consideration of its truth or falsity, but whether he honestly believed the representation to be true in the sense in which he understood it, albeit erroneously, when it was made.

We therefore wholly agree with the learned judge's conclusion that the machine in question was new and not secondhand merely because it had been used once previously for demonstration and had been involved in a minor accident, and there was therefore no misrepresentation on this aspect.

With regard to the appellant's complaint as to the 1st respondent's representation that it carried a sufficient stock of spare parts, we can see no reason to disturb the finding of fact by the learned judge on this point when he accepted the evidence of DW1 and DW4. The written guarantee of August 14, 1968 given by the 1st respondent to the appellant is self-evident and the learned judge clearly rejected the evidence of the appellant to the effect that the contents of this guarantee were falsely explained to him.

We also accept the finding of the learned judge in the matter of the breach of the implied condition as to the merchantable quality of the machine under section 7(2) of the Hire-Purchase Act. We agree that section 7(2)(a) of the Act does not apply as the examination of the machine by starting the engine would not have revealed the defects complained of. So too with the learned judge's finding on the question of the implied condition that the machine was reasonably fit for the purpose for which it was required under section 7(3) of the Act. It is clear from the evidence that the 1st respondent knew that the machine was required for the purposes of the appellant's mine. The learned judge has dealt with the evidence in respect of the breach of these two implied conditions and referred to the written complaints made by the appellant in the two letters he wrote to the 1st respondent on January 6 and February 7, 1969. It is not necessary to recapitulate all this and we need only say that as a finding of fact the learned judge accepted as true the defects complained of and the delay in attending to these and the inefficient repairs carried out but held that these were not sufficiently serious as to amount to a breach of the implied conditions of merchantable quality and fitness for the appellant's purpose. He held and we agree, quite rightly, that these matters came within the ambit of the warranty against faulty parts contained in the 1st respondent's written guarantee of August 14, 1968. This guarantee was in fact a warranty for a six-month period against faulty parts other than those caused by negligence or wear and tear and for the supply of spare parts ex stock within seven days with an undertaking to airfreight on the appellant's behalf any spares required urgently. It expired on February 14, 1969 and the learned judge found as a question of fact that there was a breach by the 1st respondent of the warranty contained therein but that this did not entitle the appellant to rescind the hire-purchase agreement but only to damages therefor. We see no reason or justification for interfering with the learned judge's findings on these matters.

It might be convenient to deal here with an argument advanced by Mr. U. Harcharan Singh for the 1st respondent in the cross-appeal. He submits that the written guarantee of August 14, 1968 does not cover repairs. We cannot accept this submission as it would appear otherwise from the terms of the document in question. The warranty was in respect of faulty parts which must in our view *ex necessitate rei* include repairs effected and this would seem to be substantiated by the fact that the only provision for payment in the written guarantee related to labour and erection charges which would be billed at cost. The driver's seat in the machine which was found right at the inception of use to have been damaged by termites was repaired or reconditioned, to use the word appearing in the 1st respondent's letter of January 14, 1969 to the appellant, and not replaced. This clearly came within the warranty and so did for instance welding and machining a flange which is a process of repair and not replacement.

Adverting now to the question of damages in respect of the loss suffered by the appellant as a result of the 1st respondent's breach of warranty during the period of its operation, the learned judge awarded a sum of $2,250 for a period of five months preceding the expiration of the warranty period in respect of loss due to oil leakage at an average of $450 per month after considering the evidence of the appellant who said that he incurred a loss of $400 to $500 in a month due to oil leakage. Mr. Harcharan Singh submits that the learned judge's award was wrong in quantum in view of the appellant's letter of January 6, 1969 to the 1st respondent when in complaining of the leakage of the hydraulic hoses he had stated: "At first it was only minor leakage but now it is getting heavier. An extra cost of $400-$500 of hydraulic oil are being wasted due to the leakage", submitting that the monetary loss stated was according to the letter only effective to the date it was written. We think that this is putting too fine and literal a construction on the wording of the letter in question, particularly as the appellant in cross-examination had said that after he took delivery of the machine and used it for two months he found oil leaking everywhere. The 1st respondent in their reply of January 14, 1969 to the appellant admitted that the hydraulic hoses were leaking. It is obviously a matter of some difficulty to estimate the loss due to leakage of oil as indeed the appellant himself said in his evidence-in-chief, and it is our view that the learned judge arrived at a correct estimate in awarding damages in the sum he did in this respect in the light of the evidence before him.

The appellant also complained that as a result of the defects in the machine his mine became inoperable and his employees had to remain idle thereby causing him a daily loss amounting to some $400 to $500. The learned judge held it was not possible to assess the loss resulting from stoppage of work during the warranty period as there was no evidence of the number of days on which the mine was at a standstill. We agree it is not possible to quantify this loss if true in the absence of any evidence of the length of time during which it was incurred. The appellant in his memorandum of appeal and in argument by counsel states that he had adduced evidence that the loss in this connection occurred for about ten days in a month for eight months but Mr. Jayadeva was unable to point to any evidence to this effect when asked to do so. In the circumstances we cannot see how the learned judge can be faulted on this point.

There is no complaint by either side on the quantum awarded by the learned judge to the 1st respondent on its counterclaim under the provisions of sections 15 and 18 of the Hire-Purchase Act which he did in the sum of $17,772.24 as the 2nd respondent as owner had assigned its rights under the hire-purchase agreement to the 1st respondent by an assignment made on November 20, 1969.

The appellant complains that the learned judge failed to consider or give any weight to the evidence of PW2, a fitter in the employ of the 1st respondent, who was called to give evidence on his behalf and who had prepared the report (P6) dated May 13, 1969 on the loader, and the 1st respondent in turn repines to the effect that the learned judge erred in law and in fact in holding it was in breach of the warranty contained in the written guarantee of August 14, 1968 and in failing to give any weight to the evidence in support of its allegation that the defects in question were due to fair wear and tear and failure on the part of the appellant to properly maintain the machine. The learned judge as we have said arrived at a finding of fact that there was a breach of warranty on the part of the 1st respondent and in doing so obviously accepted the evidence of PW2 and his report (P6), and we must point out that Tan Jok Sing (DW2), the chief fitter of the 1st respondent and immediate superior of PW2, in cross-examination agreed with the report of (P6) made by PW2.

On the 1st respondent's counterclaim in the sum of $1,770.31 for work done and spare parts supplied to the appellant at his request, the learned judge only awarded $202.10 and the 1st respondent submits that the learned judge erred in law and in fact in holding that the counterclaim in this respect was covered by the warranty contained in the written guarantee of August 14, 1968. The learned judge found that all the delivery orders and invoices put in except those relating to two pieces of cable assembly and the delivery charges therefor totalling $202.10 related to supply during the six-month warranty period contained in the written guarantee of August 14, 1968. The appellant in his letter of February 7, 1969 to the 1st respondent specifically pointed out that this complaint was made during the 'guarantee period' and added that he did not expect to hear later that he had made the complaint after that period. The learned judge further found as a fact that the defective parts for which materials were supplied by way of replacement during the period of warranty had not been sufficiently proved by the 1st respondent to have been the consequence of negligence or wear and tear and he went on to find on the evidence, and in particular accepting the evidence adduced for the appellant and principally that of PW2 and his report (P6), that the defects were in fact due to the long period of storage of the machine and that they came within the warranty and the replacements had therefore to be made *gratis*. There is no reason whatsoever to dissent from the learned judge's finding of fact on this aspect which is intricately related to his other findings we have already discussed.

In the result, we dismiss both the appeal and cross-appeal with costs. The deposit lodged in court by way of security for costs will be paid out to the respondents.

It is a matter of some regret that we feel impelled to conclude this judgment by ventilating a two-fold complaint. First, the order of August 19, 1978 drawn up to give effect to the decision of the learned judge is defective and inaccurate. After an extensive hearing in open court the order is stated to have been made in chambers (!), states that the action came on for trial in February 1973 when it actually commenced in November 1971 and does not state or properly reflect the order for costs made by the learned judge in respect of the claim and counterclaim. For this the solicitors for the 1st respondent frankly admit liability. And second, the record of appeal is badly prepared and leaves much to be desired. The indexes to both volumes of the record have hardly been of any assistance for the purpose they were intended, there is no indication in the record to assist in tracing the evidence of the several witnesses through the various stages of their examination, the oral submissions of counsel in the notes of evidence are hardly intelligible or informative as they refer to written submissions put in at the trial which are not before us, a considerable part of the massive volume of exhibits is wellnigh illegible and the index thereto gives no appropriate reference to the dates of the several documents, and even a new index to that volume tendered at the outset of the hearing in this appeal did not improve matters. Reliance on such a record of necessity entails great inconvenience and quite unnecessarily a more intensive and exhausting task than a land office search in a system of unregistered titles. The appellant's solicitors who prepared the record are of course primarily responsible on this count. The fact that culpability for this deplorable state of affairs is equally shared by both sides does not in any way detract from the gravamen of the stricture anent the callous and cavalier approach to the drafting and preparation of vital documentation.

Appeal and cross-appeal dismissed.

Solicitors: *Jayadeva & Kamal; Lewis & Co.; Skrine & Co.*

SUPERINTENDENT OF PULAU JEREJAK & ANOR. v. WONG CHENG HO

[F.C. (Suffian L.P., Lee Hun Hoe C.J. (Borneo), Wan Suleiman, Chang Min Tat & Ibrahim Manan F.JJ.) May 14 & August 23, 1979]

[Kuala Lumpur — Federal Court Criminal Appeal No. 25 of 1978]

Criminal Law and Procedure — Order of detention under Emergency (Public Order and Prevention of Crime) Ordinance, 1979 — Whether can be made against a juvenile — Juvenile Courts Act, 1947, ss. 3, 35 and 36 — Emergency (Public Order and Prevention of Crime) Ordinance, 1969, s. 4(1).

The Minister of Home Affairs had made an order under section 4(1) of the Emergency (Public Order and Prevention of Crime) Ordinance, 1969, ordering the respondent, who was a juvenile, to be detained for two years. On application to the High Court, the respondent was set free, as the learned judge held that section 4(1) of the Ordinance did not apply to a juvenile and that a juvenile could only be detained without trial in accordance with the Juvenile Courts Act, 1947. The appellants appealed.